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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/801,405

03/16/2004

Robert Senn

PI/5-20835C/D1

5092

26748

7590

08/29/2008

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PATENT AND TRADEMARK DEPARTMENT
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GREENSBORO, NC 27409

EXAMINER

FRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

08/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/801,405

Applicant(s)

SENN ET AL.

Examiner

ALTON N. PRYOR

Art Unit

1616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9, 17, 18, 20 and 23-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9, 17, 18, 20, 23, 24 and 31 is/are rejected.
- 7) ☒ Claim(s) 25-30, 32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's arguments filed 6/9/08 have been fully considered but they are not persuasive. Previous rejections/issues not addressed below have been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9,17,18,20,23,24 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mainfisch et al (USPN 5852012; 12/22/98) and The Agrochemical Handbook A0891 / Aug 91. Mainfisch teaches an insecticidal composition comprising compounds 1.2 and 1.4 in Table 1 (see column 20 Table 1) which are equivalent to instant compounds A.1 and A.3. Mainfisch teaches that compositions comprising the compounds are made by combining the compounds with auxiliaries and optionally other actives. See column 15 lines 52-58, column 17 lines 50-67. Mainfisch teaches a method of controlling insects comprising applying the compounds to the pests (insects), crop, seed, foliage, and soil. See column 18 lines 12-49, column 13 line 35 – column 15 line 37. Mainfisch does not teach the composition or method comprising abamectin. However, The Agrochemicals Handbook teaches that abamectin is an insecticide and that abamectin is applied to crops and binds to soils in order to control insects. It would have been obvious to one having ordinary skill in the art to modify the invention taught by Mainfisch to include the abamectin taught by The Agrochemical Handbook. One

would have been motivated to do this since each reference have the same utility, i.e. each reference discloses insecticidal inventions and since Mainfisch welcomes the addition of auxiliaries and other actives.

Response to Applicant's argument filed 10/8/07

Applicant argues that the Maienfisch reference is directed to the preparation of tetrahydrooxadiazines as insecticides and embraces compounds falling within the scope of the claims. Maienfisch also teaches that other actives which may be added to the preparation *may be* from the classes: organophosphorus compounds, nitrophenols and derivatives, formamidines, ureas ... and thuringiensis of which none of the classes cited would suggest / embrace abamectin. Examiner agrees that Mainfisch suggests the addition of compounds from the above classes of other actives to the composition. However, Examiner would like to point out in addition to this teaching that Mainfisch at column 17 starting at line 50 recites "the compositions according to the invention can be broadened considerably and adapted to prevailing circumstances by addition of *other insecticidal active ingredients*." Examiner would further like to point out that this teaching is broader than the teaching of the addition of the above classes of actives to Maienfisch's invention, but includes the addition of those actives as well as the addition of other actives (insecticides) not encompassed by the classes. For this reason one having ordinary skill in the art would have been motivated to add the abamectin taught by The Agrichemical Handbook to Maienfisch's composition to arrive at the instant invention. Note both inventions (prior art and instant) are to insecticidal compositions / inventions and Mainfisch welcomes the addition of other insecticides to his invention.

Since Mainfisch's composition and The Agrochemicals Handbook active have the same utility it would have been obvious to try combining the two individual teachings to arrive at a composition that would have the same utility. The fact that Mainfisch discloses that the additional actives *may be* from particular classes suggests that additional actives may be those listed in the Mainfisch reference as well as those not listed in the Mainfisch reference. The term "may be" is open language allowing for the inclusion of any or all additional actives.

Response to Applicants' further Argument filed 6/9/08

The Applicants provide a declaration demonstrating unobvious results for the combination of abamectin and thiamethoxam. The Applicants present that the claims should be allowable in light of this data in declaration. The Examiner disagrees with the Applicants and points out that all of the A compounds in the instant claims are well known insecticides as disclosed in Mainfisch and the abamectin compound is also a well known insecticide as disclosed in The Agrochemicals Handbook. Because of this fact, it would have been obvious to combine any instant compound A with abamectin in the expectation of arriving at a final composition comprising both compound A and abamectin yielding at least an additive effect. Although the Examiner agrees that the Applicants have shown unexpected results for the combination of thiamethoxam plus abamectin, the Applicants have not shown unexpected results for the full scope of the claims with respect to the A compounds in the claims. For this reason, the rejection is maintained and made final.

Claim Objection

Claims 25-30 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Applicants' declaration provides unexpected results for the combination of thiamethoxam plus abamectin.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Alton N. Pryor/
Primary Examiner, Art Unit 1616